

MINUTES
NEVADA STATE BOARD OF OPTOMETRY
REGULAR MEETING

March 7th, 2003
University of Nevada, Las Vegas
Meeting Room C, Thomas & Mack Center
4505 Maryland Parkway
Las Vegas, Nevada 89154

Dr. Alleman asked for public comment. There was no public comment

A regular meeting of the Nevada Board of Optometry was called to order by Board President, Kurt G. Alleman, O.D., at 10:00 o'clock A.M. on March 7th, 2003, in Meeting Room C, Thomas & Mack Center, University of Nevada, Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada.

Identifying themselves as present were:

Kurt G. Alleman, O.D., Board President
Brad C. Stewart, O.D., Board Member
George Bean, Board Member
Judi Kennedy, Executive Director
Tina Leiss, Senior Deputy Attorney General

Also present were:

Shanda Badger
Linda Meder, Executive Director,
Nevada Optometric Association
Jeffrey D. Ferris, O.D.
Scott A. Helkaa
Mark W. Doubrava, M.D.

The minutes of the Board's January 10th, 2003, meeting were presented for approval.

Dr. Stewart stated he felt the January 21st, 2003, correspondence from Jeanette Belz should

be discussed. The members discussed the assertion in Ms. Belz' letter that a discussion regarding tabled regulations had occurred during the Board's January 10th, 2003, meeting under Agenda Item 8, "2003 Legislative Session." The members, Ms. Kennedy and Ms. Leiss, agreed no such discussion had taken place. Ms. Leiss added if the Board had attempted to discuss regulations under the agenda item as entitled, it would have been improper, and as the Board's counsel, she would have advised the Board it could not proceed. Mr. Bean moved the minutes be approved as drafted. Dr. Stewart seconded the motion. The vote was unanimous.

Noting the presence of Dr. Ferris, Dr. Alleman directed the Board's attention to Agenda Item 5, the complaint of Misty Richardson vs. Jeffrey D. Ferris, O.D. The complaint was first reviewed by the Board at its January 10th, 2003, meeting, and had been continued for further consideration. Dr. Alleman noted the Board had received requested written statements from individuals listed as witnesses in the complaint, as well as correspondence from Dr. Ferris' counsel, who had reviewed Dr. Ferris' agreement with Costco.

Dr. Alleman asked Dr. Ferris if he had comments. Dr. Ferris stated his attorney had reviewed the agreement, and that based on that review, he believed the agreement did not violate the law governing the practice of optometry in Nevada. Dr. Ferris also stated he had sent the Board a copy of the agreement for its review. Ms. Kennedy reminded Dr. Ferris the Board had not reviewed licensee agreements for a considerable period of time, and that he had been so advised by the Board at its July 12th, 2002, meeting.

The Board and Dr. Ferris discussed his corporation's agreement with Shopko, and his agreement with doctors in his employ at the three Shopko locations in Reno. Dr. Stewart requested Dr. Ferris furnish a copy of the agreement and requested Ms. Leiss review the

agreement and give the Board clarification as to its compliance with NRS 636.301. Ms. Leiss stated she would conduct the review and report to the Board at its next regular meeting. Dr. Stewart moved the complaint be continued for further consideration at the Board's next regular meeting. Mr. Bean seconded the motion. The vote was unanimous.

The Board moved back to Agenda Item 3, the complaint of Judi D. Kennedy, as Executive Director vs. Mario Aguero, O.D. Dr. Alleman outlined the allegations of the complaint, noting Dr. Aguero, during previous testimony before the Board, had admitted to the acts alleged in the complaint. Dr. Alleman confirmed with Ms. Kennedy that Dr. Aguero had not responded to the complaint. Dr. Stewart moved an accusation be filed against Dr. Aguero, with a proposed disposition of the accusation to include: [1] an administrative fine in the amount of \$5,000; [2] a probationary period of three years; and periodic inspections of his office to be conducted by an agent of the Board, during the probationary period. Mr. Bean seconded the motion. The vote was unanimous. Dr. Alleman asked Ms. Leiss if there were other legal avenues the Board should pursue. Ms. Leiss responded she would look into whether or not, given the allegations of the complaint, the Board would be required to take further action or make additional reports.

The Board next considered Agenda Item 4, the complaint of Judi D. Kennedy, as Executive Director vs. Lesa D. Davis, O.D. Ms. Kennedy advised the Board that Dr. Davis, since the filing of the complaint, had remitted the required fee for a duplicate license. After discussion, Dr. Stewart moved an accusation be filed against Dr. Davis, providing for disposition of the Accusation by the payment of a \$250 administrative fine. Mr. Bean seconded the motion. The vote was unanimous. The Board directed Ms. Kennedy to explore filing a complaint against the employing optometrist, based on the statutory

responsibility placed on optometrists who employ other optometrists, and given the fact that Dr. Davis had commenced practicing optometry at an additional location without the required additional license.

Turning to Agenda Item 6, the February 19th, 2003, correspondence from Michelle Miller, O.D., Ms. Kennedy advised the Board Dr. Miller had completed her continuing education prior to the statutory deadline, and that her license had been renewed for the 2003-04 license year.

The Board discussed Agenda Item 7, the February 19th, 2003, correspondence from Timothy Milburn, O.D. At the conclusion of its discussion, the Board determined no action would be taken.

Moving to Agenda Item 8, 2003 Legislative Session, Dr. Stewart advised a BDR would be introduced to remove subparagraph (4)(a) from NRS 636.387, which provides an initial fitting of a contact lens must be performed by a dispensing optician. Dr. Stewart directed the Board's attention to NRS 636.025(1)(f), stating the language contained in the statute outlining "Acts constituting practice in optometry" is in conflict with NRS 636.387(4)(a). Dr. Alleman advised the Board a meeting had been scheduled for Tuesday, March 11th, 2003. He stated the Board's lobbyist, Ms. Kennedy, the lobbyist for the Board of Opticians, and a member of the Board of Opticians, would attend the meeting in person, and that he would be joined by phone. It was agreed the issue of the conflicting language contained in NRS 636.025(1)(f) and NRS 636.387(4)(a) should be raised at the meeting.

Proceeding to Agenda Item 9, the report of the executive director, Ms. Kennedy advised the Board of the situation with the Board's former payroll service. Ms. Kennedy advised the Board the payroll service had agreed to file amended returns to correct the

improper remittances of FUTA and FICA taxes. She stated reimbursement of the sums remitted would be sent directly to the Board.

Ms. Kennedy directed the Board's attention to the January 10th, 2003, correspondence from ARBO, and the correspondence from the Office of the Washoe County Clerk. Ms. Kennedy stated she felt a mailing, including the two pieces of correspondence, to current licensees would be helpful. The Board concurred, and directed Ms. Kennedy to proceed with a mailing.

Ms. Kennedy presented, for approval, an Executive Director's Job Description and Personnel Policies. The Board directed Ms. Kennedy to add "other duties as assigned" to the job description. Mr. Bean moved the job description be approved as amended. Dr. Stewart seconded the motion. The vote was unanimous. After reviewing the proposed Personnel Policies, Mr. Bean moved they be approved and that Ms. Kennedy's annual vacation be increased to three weeks per year as per the prepared policies. Dr. Stewart seconded the motion. The vote was unanimous.

Dr. Stewart moved Ms. Kennedy be awarded a 4% cost of living raise and a bonus in the amount of 17% of her annual salary, amounts equal to the remuneration awarded the previous year. Mr. Bean advised the Board Dr. Sutton had requested any proposed bonus be increased by \$2,000. Ms. Kennedy stated she felt, given the creation of the inactive fee, and the resulting initial decrease in revenue, the bonus should not be increased. Mr. Bean seconded Dr. Stewart's motion. The vote was unanimous.

The Board scheduled its next regular meeting for May 30th, 2003, in Reno, Nevada.

The Board scheduled a regular meeting for July 18th, 2003.

Dr. Alleman asked for public comment. There was no public comment.

Mr. Bean moved the meeting adjourn. Dr. Sutton seconded the motion. The vote was unanimous. The meeting adjourned at 11:05 a.m.